



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2017-0512; FRL-9984-66-Region 7]

**Approval of Kansas Air Quality State Implementation Plans;
Construction Permits and Approvals Program**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Kansas State Implementation Plan (SIP) and the Clean Air Act (CAA) 112(l) program. Specifically, these revisions implement the revised National Ambient Air Quality Standards (NAAQS) for fine particulate matter; clarify and refine applicable criteria for sources subject to the Kansas minor New Source Review permitting program; update the construction permitting program fee structure and schedule; and make minor revisions and corrections. Approval of these revisions ensures consistency between the State and federally-approved rules and ensures Federal enforceability of the State's rules.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2017-0512. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Deborah Bredehoft, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7164, or by email at Bredehoft.Deborah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. Background
- II. What is Being Addressed in this Document?
- III. What Part 52 Revision is EPA Approving?
- IV. What 112(l) Revision is EPA Approving?
- V. Have the Requirements for Approval of a SIP Revision Been Met?
- VI. EPA's Response to Comments

VII. What Action is EPA Taking?
VIII. Incorporation by Reference
IX. Statutory and Executive Order Reviews

I. Background

EPA received Kansas's SIP submission on December 5, 2016. On September 21, 2017, EPA proposed in the **Federal Register** approval of the SIP submission. See 82 FR 44131. In conjunction with the September 21, 2017 notice of proposed rulemaking (NPR), EPA issued a direct final rule (DFR) approving the same SIP submission. See 82 FR 44103. However, in the DFR, EPA stated that if EPA received adverse comments by October 23, 2017, the action would be withdrawn and not take effect. EPA received adverse comments prior to the close of the comment period, and therefore, EPA withdrew in the **Federal Register**, the DFR on November 17, 2017. See 82 FR 54300.

This final rule action will include the updated docket, address comments received, and finalize the approval of Kansas's SIP submission.

II. What is Being Addressed in this Document?

EPA is taking final action to approve revisions to the Kansas SIP and CAA 112(l) program submitted by the State of Kansas on December 5, 2016. The SIP submission requests revisions to Kansas Administrative Regulation (K.A.R.) 28-19-300 that include: implementation of the New Source Review permitting component of section 110(a)(2)(C) for the 1997 and 2006 PM_{2.5}

NAAQS, pursuant to EPA's NSR PM_{2.5} Implementation Rule (2008 NSR Rule) (73 FR 28321, May 16, 2008); and clarification of and refining applicability criteria for sources subject to the minor New Source Review permitting program. Specific revisions include: (1) eliminating the requirements for all Title IV Acid Rain sources to obtain construction permits that would not have otherwise been required; (2) clarifying the construction review requirements for sources emitting hazardous air pollutants, or sources subject to standards promulgated by the EPA; (3) eliminating the requirement for sources to obtain an approval solely due to being subject to standards promulgated by the EPA without regard to emissions for insignificant activities; and making minor revisions and corrections. The SIP submission also includes the following revisions to K.A.R. 28-19-304: (1) updating the construction permitting program fee structure from an estimated capital cost mechanism to one based on complexity of source and permit type and (2) updating the fee schedule to bring in sufficient revenue to adequately administer the Kansas Air Quality Act.

III. What Part 52 Revision is EPA Approving?

EPA is approving requested revisions to the Kansas SIP relating to the following:

- Construction Permits and Approvals. Kansas Administrative Regulations 28-19-300. Applicability; and
- Construction Permits and Approvals. Kansas Administrative Regulations 28-19-304. Fees.

EPA has conducted analysis on the State's revisions and has found that the revisions ensure consistency between the State and federally-approved rules and ensures Federal enforceability of the State's rules. Additional information on the EPA's analysis can be found in the Technical Support Document (TSD) included in this docket.

IV. What 112(1) Revision is EPA Approving?

EPA is also taking final action to approve a portion of K.A.R. 28-19-300 under the CAA 112(1) program pursuant to 40 CFR part 63, subpart E, as requested by the State of Kansas on April 19, 2017. The State of Kansas is requesting that the applicable portions of K.A.R. 28-19-300 pertaining to limiting the potential-to-emit of hazardous air pollutants (HAPs) be approved under CAA 112(1) and 40 CFR part 63, subpart E, in addition to

being approved under the SIP.¹ Specifically, K.A.R. 28-19-300(a)(2) and (3) as well as K.A.R. 28-19-300(b)(4) through (6) are also approved under CAA section 112(l) because they require permits or approvals for hazardous air pollutants that may limit the potential-to-emit of hazardous air pollutants by establishing permit conditions that are federally-enforceable.

V. Have the Requirements for Approval of a SIP Revision Been Met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice of this SIP revision from August 11, 2016, to October 13, 2016, and received one comment letter. The SIP revision was not further revised by the State based on public comment prior to its submission to EPA. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and the implementing regulations.

¹ State Implementation Plan provisions approved under section 110 of the Clean Air Act are for criteria pollutants. Provisions related to hazardous air pollutants are approved under section 112 of the Clean Air Act.

VI. EPA's Response to Comments

The public comment period on EPA's proposed rule opened September 21, 2017, the date of its publication in the **Federal Register**, and closed on October 23, 2017. During this period, EPA received adverse comments, which are addressed below.

Comment 1:

The commenter stated that SIPs are required to have legally enforceable procedures to prevent the construction or modification of a source that would violate the control strategy or interfere with attainment or maintenance of the NAAQS. 40 CFR 51.160(a). The commenter is specifically concerned about the EPA approval of a new emissions threshold, in K.A.R. 28-19-300(a)(1)(G), of 10 tons per year of directly emitted PM_{2.5} without additional analysis by the State on whether the emissions threshold would allow sources to construct or modify, resulting in interference with attainment or maintenance of the NAAQS or a violation of the control strategy, as required by 40 CFR 51.160(a) and (b). Further, the commenter is concerned regarding applicability of the minor NSR rules for modifications of existing sources based on increases in potential to emit (PTE). The commenter is concerned that the actual emissions increase of PM_{2.5} could be much greater than 10 tons per year and would not trigger minor NSR permitting requirements. According to the commenter, the revisions will essentially exempt minor

modifications from permitting requirements at existing major sources, and only major modifications under the Prevention of Significant Deterioration (PSD) or nonattainment NSR programs will obtain review for impacts on the NAAQS.

The commenter asserts that States are required to have NSR programs that include, but are not limited to, major NSR and PSD programs pursuant to section 110(a)(2)(C) of the CAA. The commenter is concerned that Kansas' 10 ton per year $PM_{2.5}$ applicability emissions threshold could allow for increased deterioration in air quality over PSD baseline concentrations. Thus, the commenter believes that the EPA cannot approve such a SIP revision without a demonstration that the SIP revision will not cause or contribute to a violation of the applicable PSD increment pursuant to section 110(1) of the CAA and 40 CFR 51.166(a)(2).

For these reasons, the commenter believes that the EPA must disapprove the 10 ton per year $PM_{2.5}$ applicability emission thresholds for Kansas's minor NSR permitting program.

Response 1:

In this SIP revision, Kansas is modifying its regulations to implement the fine particulate matter standard by clarifying and refining the applicability criteria for sources subject to the Kansas minor New Source Review permitting program. Kansas's addition of the 10 ton per year threshold for directly emitted

PM_{2.5} in the minor source New Source Review program requires a facility to obtain a construction permit for directly emitted PM_{2.5} is consistent with the previously approved approach of using a potential-to-emit (or the increase in the potential-to-emit) basis EPA considers a 10 ton per year threshold for direct PM_{2.5} to be reasonable because the State is consistent with the significant emission rates² included in EPA's PSD preconstruction permitting program.³

Prior to this action, Kansas used the threshold value of 25 tons per year or PM₁₀ threshold value of 15 tons per year (K.A.R. 28-19-300(1)(A)) to evaluate direct PM_{2.5}. With this rulemaking, Kansas has created a separate threshold for directly emitted PM_{2.5} of 10 tons per year.

Although Kansas's minor New Source Review permitting program did not previously include a direct PM_{2.5} threshold value, Kansas does have overarching infrastructure to implement PM_{2.5} throughout the State. Such infrastructure, as previously stated, includes a SIP approved major source New Source Review program and a monitoring network consistent with EPA's monitoring regulations. In fact, based on a review of certified design values from the 2005-2007 to 2014-2016 timeframes, Kansas has been continuously monitoring attainment for both the annual

² See 73 FR 28332.

³ 40 CFR 52.21(b)(23)(i).

and 24-hour PM_{2.5} NAAQS EPA believes that the addition of the direct PM_{2.5} threshold in the Kansas Minor New Source Review permitting program strengthens Kansas's air quality regulations

The commenter also stated that the EPA must disapprove such a high minor NSR PM_{2.5} applicability emission threshold as the program could interfere with attainment and maintenance of the NAAQS. As stated above, prior to this action, Kansas did not have a specific minor source threshold for directly emitted PM_{2.5}. Therefore, the PM_{2.5} threshold value would have been the same as the PM threshold value of 25 tons per year (K.A.R. 28-19-300-(1) (A)). As discussed above, even at this higher threshold value, the PM_{2.5} NAAQS was protected.

Furthermore, in the EPA's previously referenced Technical Support Document⁴ for the 2012 PM_{2.5} infrastructure SIP, the EPA stated that "[w]ith respect to smaller sources that meet the criteria listed in KAR 28-19-300(b) "Construction Permits and Approvals," Kansas has a SIP-approved permitting program." It further states that in the Technical Support Document, "[i]f the [Air Permitting Section] staff determines that air contaminant emissions from a source will interfere with attainment or maintenance of the NAAQS, it cannot issue an approval to construct or modify that source (KAR 28-19-301(d) "Construction

⁴ Pages 5 and 6 of the Technical Support Document found in docket number: EPA-R07-OAR-2016-0313-0004

Permits and Approvals; Application and Issuance"). This authority is granted by [Kansas Statutes Annotated] 65-3008." EPA later stated its belief "that the Kansas SIP meets the requirements of section 110(a)(2)(C) for the 2012 annual PM_{2.5} NAAQS."

Based upon all the above factors, the EPA believes that this action does not relax the SIP and that the air quality will be maintained with the addition of the PM_{2.5} threshold value requiring facilities to obtain a construction permit.

Comment 2:

The commenter stated that by removing the term "affected source" from K.A.R. 28-19-300(a)(2) of the currently-approved Kansas SIP, the EPA is significantly relaxing the Kansas minor New Source Review permitting rules. "Affected source" is defined in K.A.R. 28-19-200 of the EPA-approved SIP as "a stationary source that includes one or more affected units subject to emission reduction requirements or limitations under title IV of the Federal clean air act, 42 U.S.C. §7401 et seq., 'acid deposition control.'" The commenter is concerned that the revised permitting rules for modifications of construction permits will increase the potential-to-emit of an electrical generating unit (EGU) to the level of a PSD major modification significance level or greater, when historically, the permitting rules required permits for modifications at any EGU.

The commenter stated that all modifications at most EGUs were subject to Kansas' minor NSR permitting program pursuant to K.A.R. 28-19-300(a)(2) of the currently-approved Kansas SIP, irrespective of the tons per year emission thresholds defining minor NSR applicability in K.A.R. 28-19-300(a)(1).

The commenter was concerned that modifications at existing EGUs will go entirely unreviewed unless such modifications are a major modification under PSD or nonattainment NSR permitting. The commenter further stated that the Kansas Department of Health and Environment (KDHE) has not submitted any assessment of impacts on the NAAQS or on other requirements of the CAA to support approval of such a significant SIP relaxation, pursuant to section 110(1) of the CAA and thus, EPA must disapprove the revisions to K.A.R. 28-19-300 that remove the provision in K.A.R. 28-19-300(a)(2).

Response 2:

Kansas has a long-standing interpretation that was articulated in a 2015 technical guidance document.⁵ The guidance states "[K.A.R. 28-19-300] was originally written in 1993. The purpose of this guidance document is to ensure that the rule is consistently applied in accordance with the original intent of the regulation." The document further states KDHE's

⁵ Kansas Technical Guidance Document – BOA 2015-01

interpretation that "K.A.R. 28-19-300(a)(2) does not require a permit for a modification to an Acid Rain Source solely due to the unit already being an Acid Rain Source, although requirements for construction permits or approvals can be triggered by emission increases above permit or approval thresholds, requirements of K.A.R. 28-19-350, or other permit or approval triggers." Thus, KDHE has interpreted K.A.R. 28-19-300(a)(2) to only apply to constructions or modifications that result in emission increases. KDHE did not intend to require Title IV acid rain sources to obtain construction permits for any modification, including modifications that result in emission decreases. Therefore, this SIP revision is an administrative change to align the Federally-approved SIP with Kansas's current practices. Additionally, the CAA does not require construction permits for every modification at acid rain sources. Because Kansas's monitoring network is currently monitoring attainment for all NAAQS, the EPA does not believe this revision will cause air quality to degrade in Kansas.

Comment 3:

The commenter stated that Kansas has changed the requirements for preconstruction approval to only apply to "construction," "modification," or "reconstruction" of such sources subject to New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), or Maximum Achievable Control Technology (MACT) as those terms are defined in 40 CFR parts 60, 61, and 63, respectively. The commenter further focused on the terms "modification" and "modify" and expressed concern that this change in the definition of "modification" will significantly reduce the number of sources subject to Kansas preconstruction approval and significantly decreases the likelihood that Kansas will identify a modified source as potentially contributing to air pollution within the State and require a minor NSR permit pursuant to K.A.R. 28-19-300(b)(2) and 28-19-300(a)(5). Specifically, the commenter stated that the definition of "modification" under 40 CFR parts 60, 61, and 63 is much less inclusive than the definition of "modification" as that term is used in Kansas' minor NSR rules. Thus, the commenter asserts, with the proposed revisions to K.A.R. 28-19-300(b)(3), the large majority of modifications at existing sources subject to NSPS, NESHAPs, or MACT standards will no longer need to receive KDHE's approval prior to construction, and the public will lose KDHE's

preconstruction evaluation of whether a modified source should still be required to obtain a preconstruction permit pursuant to K.A.R. 28-19-300(b)(2) and 28-19-300(a)(5) despite being exempt under K.A.R. 28-19-300(a). The commenter believes that this reflects a significant relaxation in Kansas' minor NSR permitting rules. Therefore, the commenter believes that the EPA must disapprove the revisions to K.A.R. 28-19-300 that revises and relaxes K.A.R. 28-19-300(b)(3).

Response 3:

EPA disagrees with the commenter that Kansas definition of "modification" represents a relaxation in Kansas' permitting rules. The revision to the definition simply excludes modifications which do not increase emissions at or above the listed thresholds. Kansas had a 2015 technical guidance document⁶ which states that Kansas's intent was to require a construction approval if the proposed project "includes construction or modification that will cause an increase in emissions in an amount equal to or in excess of any of these listed thresholds."⁷ Within Kansas's public hearing statement from October 13, 2016, it was stated that the proposed change is being done to "eliminate the requirement for sources to obtain an approval solely due to being subject to standards promulgated by the EPA

⁶ Kansas Technical Guidance Document – BOA 2015-01

⁷ Page 5 of Construction Permits and Approvals, K.A.R. 28-19-300, Technical Guidance Document – BOA 2015-01.

without regard to emissions for insignificant activities." Due to Kansas's long-standing interpretation, the EPA believes that this revision will not result in air quality degradation and thus will not result in a relaxation in how Kansas has applied the SIP rules. The EPA has concluded that this revision to Kansas SIP will not interfere with attainment of the NAAQS or with any other requirement of the Act.

Comment 4:

The commenter is concerned that the revisions to K.A.R. 28-19-300(a)(2) and K.A.R. 28-19-300(b)(3) will relax the SIP. The commenter further expressed other concerns: (1) with respect to the minor NSR program, the applicability to the minor NSR permitting program in Kansas will be whittled down to just those new sources and modifications to existing sources that increase the PTE to emissions levels at or above the tons per year thresholds in K.A.R. 28-19-300(a)(1) which are the same as the PSD significance emission levels⁸; (2) several new and revised NAAQS have been promulgated since the EPA's initial 1995⁹ approval of this section, and there has been no analysis as to whether the emission applicability thresholds in Kansas' minor NSR permitting program are adequate to ensure that no new or modified source will be constructed if it would interfere with

⁸ 40 CFR 52.21(b)(23)(i).

⁹ 50 FR 36361 - 36364 (July 17, 1995)

attainment or maintenance of the NAAQS or violate the control strategy; (3) if EPA's determination that the tons per year emissions thresholds are "de minimis" under PSD permitting, it does not address EPA's obligation to ensure that Kansas' minor NSR program will not interfere with attainment or maintenance of the NAAQS. The commenter stated that the NSR program was intended to be a basic backstop on threats to attaining and maintaining the NAAQS and thus is an important component of the SIP and the EPA cannot approve exemptions from such a minor NSR program unless it is shown that the exemptions are truly de minimis to the purposes of that program; and (4) EPA has previously required minor NSR programs to use much smaller emission thresholds for applicability than the major modification significant impact levels. The commenter referenced a 2012 Montana **Federal Register** action¹⁰ regarding a "de minimis" increase to Montana's minor NSR program where EPA received and reviewed CAA section 110(1) and 193 demonstrations.

For these reasons, the commenter believes that the EPA cannot approve these Kansas minor NSR revisions without evaluating and demonstrating to the public that Kansas' minor NSR program, as revised, will still meet the mandates of section 110(a)(2)(C) and 40 CFR 51.160.

¹⁰ 77 FR 7531 – 7534.

Response 4:

EPA does not believe the proposed changes constitute a relaxation to Kansas's SIP. As noted by the commenter, these thresholds, with the exception of PM_{2.5}, were approved into the SIP in 1995. Even though Kansas did not provide any modeling to support this action, with the exception of the 2008 lead ambient air quality standard, Kansas is designated attainment or unclassifiable for all ambient air quality standards, including the 2012 PM_{2.5} standard. EPA views this action as the State's effort to ensure consistency between the State's regulations, which use the major NSR significance levels as minor NSR applicability thresholds, and the EPA's significance levels for specific pollutants, such as PM_{2.5}.

The proposed revisions are to Kansas's minor source NSR program and States are allowed discretion in how they develop their own minor source NSR program. With regard to the commenter's assertion that there was no analysis as to whether the emissions applicability thresholds in Kansas' minor NSR permitting program are adequate to ensure it will not interfere with attainment or maintenance of the NAAQS, the EPA reviews the State's minor NSR program routinely as part of the 'infrastructure' SIPs. For instance, as recently as September 9,

2016,¹¹ the EPA stated that “[i]f the [Air Permitting Section] staff determines that air contaminant emissions from a source will interfere with attainment or maintenance of the NAAQS, it cannot issue an approval to construct or modify that source.” EPA further stated that “EPA is proposing to approve Kansas’ infrastructure SIP for the 2012 annual PM_{2.5} NAAQS with respect to the general requirements in section 110(a)(2)(C) to include the program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.”¹²

With respect to the commenter’s assertion that the State’s minor NSR program needs to comply with CAA 110(a)(2)(C) and 40 CFR 51.160 as a backstop, in the same September 9, 2016 TSD,¹³ the EPA has also determined that the State has in place the ability to regulate NSR to comply with CAA 110(a)(2)(C). See the Technical Support Document associated with that rulemaking and EPA’s response to Comment 1.

With regard to the commenter’s reference to Montana’s SIP revision, EPA approval of one *de minimis* exemption threshold level in Montana does not preclude the approval of a different threshold in another State. Each State’s universe of minor NSR sources, topography, meteorology, and ambient air quality

¹¹ 81 FR 62373

¹² EPA-R07-OAR-2016-0313-0003

¹³ 81 FR 62373

conditions are unique and influence the types of exemptions that would not interfere with the minor NSR program's ability to meet the applicable Federal requirements. See, e.g., June 29, 2018, 83 FR 30553 (Arkansas' SIP revision).

In response to the comment that EPA cannot approve exemptions without proving the exemptions are "de minimis," the minor NSR SIP rules do not preclude EPA from approving exemptions from a *minor* NSR program, provided that the proposed revisions to the Kansas minor NSR program are approvable and do not result in a violation of the control strategy or interfere with the attainment or maintenance of a national standard. The CAA at section 110(a)(2)(C) requires regulation of the modification or construction of any stationary source within the area *as necessary* (emphasis added) to assure that the standards are achieved. As such, the CAA at section 110(a)(2)(C) and the minor NSR SIP rules found at 40 CFR 51.160 through 51.165, as well as case law¹⁴, allow exemptions from a minor NSR permitting program. In cases such as this, where the minor NSR SIP is being revised, the State must also demonstrate that the revisions meet the requirements of CAA section 110(l). Similar to the provisions of the Act and rules discussed above, section 110(l) requires that EPA cannot approve revisions to the Kansas minor

¹⁴ Alabama Power Company, et al., Petitioners,* v. Douglas M. Costle, As Administrator, Environmental Protection Agency, et al., Respondents,* Sierra Club, et al., Intervenors.*, 636 F.2d 323 (D.C. Cir. 1980).

NSR SIP unless EPA finds that the changes would not interfere with any applicable requirement concerning attainment and reasonable further progress, as well as any other applicable statutory requirement. The clear reading of the Act and the EPA rules are that EPA can approve exemptions to the Kansas minor NSR SIP program as long as it finds these exemptions will not interfere with attainment or maintenance of a NAAQS or other control strategy. See, e.g., June 29, 2018, 83 FR 30553 (approving Arkansas' SIP revision).

For these reasons and those outlined in the EPA's responses to comments 2 and 3 above, the EPA is approving the SIP revisions.

Comment 5:

EPA failed to address the March 28, 2017 Executive Order on promoting energy independence and economic growth. This order requires EPA to assess whether this new regulation imposes burdens on the energy sector or economic growth in general. The commenter asserts that requiring construction permits for sources will cause an impact in the energy sector and impose economic burdens on regulated facilities.

Response 5:

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State actions, provided that they meet the criteria of the CAA. The EPA cannot consider disapproving a SIP submission or require any changes based on the March 28, 2017, executive order.

VII. What Action is EPA Taking?

EPA is taking final action to amend the Kansas SIP and CAA 112(l) program by approving the State's request to amend K.A.R. 28-19-300 Construction Permits and Approvals - Applicability and to amend the Kansas SIP by approving K.A.R. 28-19-304 Construction Permits and Approvals - Fees. Approval of these revisions will ensure consistency between State and federally approved rules. EPA has determined that these changes will not adversely impact air quality.

VIII. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Kansas Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹⁵

IX. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

¹⁵ 62 FR 27968 (May 22, 1997).

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: _____

September 26, 2018.

James B. Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

Part 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R Kansas

2. Amend §52.870 by revising the table entries in paragraph (c) for "K.A.R. 28-19-300" and "K.A.R 28-19-304" to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Kansas Regulations

| Kansas citation | Title | State effective date | EPA approval date | Explanation |
|--|---------------|----------------------|---|-------------|
| Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control | | | | |
| * * * * * | | | | |
| Construction Permits and Approvals | | | | |
| K.A.R. 28-19-300 | Applicability | 11/18/2016 | [Insert date of publication in the Federal Register], [Insert Federal Register citation] | |
| * * * * * | | | | |
| K.A.R. 28-19-304 | Fees | 11/18/2016 | [Insert date of publication in the Federal Register], [Insert Federal Register citation] | |
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